

BEFORE THE ARBITRATOR

In the Matter of the Petition of

FOND DU LAC SHERIFF'S DEPARTMENT
(NON-PROTECTIVE SERVICE EMPLOYEES)
AFSCME LOCAL 1366-F

To Initiate Arbitration
Between Said Petitioner
and

Case 162
No. 56975 INT/ARB-8591
Decision No. 29560-A

FOND DU LAC COUNTY

Appearances:

Richard Celichowski, Director of Administration, appearing
on behalf of the Employer.

James Miller, Staff Representative, Wisconsin Council of
County and Municipal Employees, AFSCME, AFL-CIO, appearing on
behalf of the Union.

INTEREST ARBITRATION AWARD

Fond du Lac Sheriff's Department (Non-protective Service Employees), AFSCME LOCAL 1366-F, (herein "Union") having filed a petition to initiate interest arbitration pursuant to Section 111.70(4)(cm), Wis. Stats., with the Wisconsin Employment Relations Commission (herein "WERC"), with respect to an impasse between it and Fond du Lac County, (herein "Employer" or "District"); and the WERC having appointed the Undersigned as arbitrator to hear and decide the dispute specified below by order dated March 8, 1999; and the Undersigned having held a hearing, in Fond du Lac, Wisconsin, on May 5, 1999; and each party having filed post-hearing briefs, the last of which was received June 28, 1999.

ISSUES

The parties' last collective bargaining agreement expired December 31, 1998. Both parties propose a new two year agreement, effective January 1, 1999. The parties' final offers

frame the issues, I summarize them as follows:

1. Wages: The Employer proposes to increase wages by 3% across-the-board on January 1, of each year of the agreement. The Union proposes to increase wages by 3% across-the-board. In addition it proposes to add \$.25 per hour to Step II, III, IV and IV of Correctional Officer II and III classifications effective July 1, 1999 and again on July 1, 2000.

2. The Employer proposes to add to Article XIII, Work Schedule: the following provision: "12.01(a) At such time that the Union agrees to change the Communication Officers 6-3 work schedule to either a 4-2 or 5-2, 5-3 schedule the Communication Office rates of pay shall be increase to 2.38% across the board.

POSITIONS OF THE PARTIES

The Union notes that there is no dispute over the general wage increase to be applied: the issue is with respect to the adjustments to the salary schedule. The parties have agreed upon the other public sector employers which they deem are comparable; namely, Dodge County, Manitowoc County, Sheboygan County, Washington County, and Winnebago County. Based upon 1998 wage rate comparisons, this unit is \$.47 behind the average pay for Correction Officers among these comparable groups. This is true even without the consideration of longevity programs. There is no longevity program in this unit and, accordingly, when longevity is considered, this unit would be \$.78 behind for 1998.

The Employer's offer would cause the unit to fall even further behind. Accordingly, the Union believes that its wage offer should be adopted.

The Union opposes any change in the 6-3 schedule because it would reduce overtime opportunities to unit employees, might result in loss of vacation accrual because Communications Officers receive 6 days of vacation for every week they are entitled to vacation, and would limit the ability of the Union to negotiate the "price for such a change."

The Employer takes the position that the sole issue of significance is the issue concerning the supplemental increase proposed by the Union. It argues that the issue concerning schedule is of minor significance because the Union need not agree to the change in schedule. The Employer agrees that the appropriate set of external public sector comparisons is the following counties: Dodge, Manitowoc, Outagamie, Sheboygan, Washington, and Winnebago.

The Employer notes that the Union's approach to negotiations with the Employer is a factor it believes should be given heavy weight. In the 1981-6 period, the Correction Officers ranked sixth among comparable counties, while the Communications Officers ranked fourth. From 1987-98, the Correctional Officers rank improved from sixth to fifth and the Communications Officers ranking improved from fourth to third. However, the deviation of both positions from the median went down significantly: Correctional Officers went up toward the median while Communications Officers went down toward the median. In its view, the Union inappropriately seeks to increase the position of Correctional Officers toward the median while not narrowing the gap of the Communications Officers above the median.

The Employer also argues that the Union's use of a split increase is inappropriate in that there is neither an ability-to-pay issue or need for catch-up increase. The Employer notes that its offer is more consistent with the cost of living factor than the Union's.

The Employer believes that its offer is also supported by internal comparisons. Half of the Employer's employees are represented. There are a total of seven bargaining units, all represented by the same union. There is a long history of essentially similar settlements among these units. Only two of the units of the County are settled, Highway and Professional Social Workers. The social workers settled for 3% with an additional .5% at the maximum step of the schedule (step V) in each year 1999 and 2000. The highway unit settled for 3% in each year. The Employer has given its non-represented employees a 3% increase for 1999.

The Employer also argues that the Union has failed to show any need for the additional pay based upon external comparisons. It argues that the appropriate measure of comparison is median pay rather than average. This is true because Winnebago County uses sworn patrol officers in its jail and, therefore, they are paid a much higher rate than the others. Further, Washington County rates are higher in that they are really a suburb of Milwaukee. The Employer's proposed 3% increase is identical to that offered by 3 of the 5 comparable counties in 1999. Only Winnebago County has settled for 2000. The Employer also argues its position is favored by a benchmark analysis looking at rates of pay after 18 months of employment and at the maximum. The Employer also argues that its position should be preferred because it maintains the relative rank of this unit with that of the external public sector comparables.

Finally, it notes that it believes that its offer is also supported by the public interest in that its offer provides the public with employee services at the lowest reasonable cost while the Union's would simply increase that cost. The Union's offer would result in an annual cost factor of \$43,500 more than the Employer's at the start of the 2001 year. The testimony of the Personnel Director indicates that it has not had any difficulty recruiting for the Correctional Officer position and that, instead, the quality and quantity of candidates has been improving over the years. This would not be the case, if the wages were inadequate here. Accordingly, the Employer believes that its final offer should be adopted.

The Union disagrees with the Employer's method of calculating the "median" wage among the comparables in that it included Fond du Lac County's wages in the calculation. If it is excluded, the Union states that the unit is \$.66 below the mean instead of the \$.37 cited by the Employer. The Employer's offer would have the Union still fall further behind the mean in each year of the agreement. It argues that either using the mean or the median, the unit is underpaid.

Next, it disagrees with the Employer's treatment of Outagamie County, in the Employer's comparisons. Outagamie County's union rejected the tentative agreement. The Employer assumed that employees there would get a 3% increase. Further, the Employer included longevity in the wage rate there and then made comparisons.

The Union indicates that the Employer has not offered evidence to support its arguments about bargaining history and, therefore, the arbitrator should not give that any weight. The Union next notes that the Employer made the same error in calculating median and mean wage rates when comparing Communication Officer rate. The Employer also includes built in overtime in its calculations which should not be included as part of the straight time wage rate.

The Union disputes the usefulness of comparing wage rates at the 18 month level since few employees are ever at that step. Of the 25 employees in the Correctional Officer II classification in this unit, 16 are at the top step. The Union also notes that its overall argument is for a catch-up increase and, therefore, by definition, it should exceed cost-of-living type settlements in other jurisdictions.

In its reply the Employer disagrees with the Union's

statement that the overtime position, if implemented, would result in a loss of overtime opportunity or pay in that the 2.38% pay increase would leave each employee at the same annual salary.

Similarly, it argues there is no loss in vacation accrual. Further, the 2.38% merely reverses the wage reduction the parties agreed to when they implemented the scheduled overtime.

As to the wage comparisons, it notes that the arbitrators cited by the Union do not adhere to the position that catch-up is required merely because a unit's wages are below average.

It also argues that the Union's reliance on longevity is somewhat misplaced. Most of the counties which have longevity plans have fixed amount additions to the wage rates. Additionally, the chart used by the Union is deceptive in that the longevity rates it relies upon are after many years of service, a service level many employees never reach in their career.

DISCUSSION

Process

The arbitrator is responsible to select the final offer of one party or the other without modification. The decision is to be made by applying the following statutory standards to the evidence:

"7. 'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer) body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

7g. 'Factor given greater weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.

7r. 'Other factors considered.' In making any decision under the arbitration procedures authorized by this paragraph, the

arbitrator or arbitration panel shall also give weight to following factors:

- a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours, and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
- e. Comparison of wages, hours, and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.
- f. Comparison of wages hours, and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in private employment in the same community and in comparable communities.
- g. The average consumer prices for goods and services, commonly known as the cost of living.
- h. The overall compensation presently received by the employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective

bargaining, mediation, fact finding, arbitration, or otherwise between parties, in the public service or in private employment."

In this case, the parties agree that Factor 7 is not applicable. Factor 7g is not applicable here either. The issue with respect to salary adjustments if a schedule change occurs does not have significant weight in this case. There are important aspects of that proposal which were not fully addressed by the parties and, therefore, independent discussion of the same is premature.

Background

The Union represents all regular full-time and regular part-time non-protective employees of the Fond du Lac County Sheriff's Department. This is one of six collective bargaining units in the county. The other units are: Sheriff's Department (protective unit), Professional Social Service unit, Social Services non-professional unit, the highway unit, and institutions unit. Combined, they represent about 50% of the work, the remainder being unrepresented.

The classifications in this unit relevant to this dispute are the classifications of Correctional Officer I, II and III. These are all employees without the power of arrest. They perform the duties of supervising the operation of the jail. Correctional Officer I is an entry level position which automatically progresses to the Correctional Officer II level after 18 months. There are 8 Correctional Officer I's in the unit. There are 25 Correctional Officer II positions in the unit, 14 have 5 or less years of total service. Seven have about 11 years of service and 5 have fourteen or more years of service. Correctional Officer III is a lead worker position. There is no automatic progression into that position. There are 4 Correctional Officer III's, all with relatively little service. There are 21 other employees in this unit including, but not limited to 8 communications officers.

The parties have agreed upon the general increase to be applied to wages and the sole issue is the "catch-up" increase proposed by the Union for the Correctional Officer II and III classifications. There are two settlements affecting the 1999 and 2000 years among the units in Fond du Lac County, professional social worker unit and the highway unit. The highway settlement is consistent with that offered by the Employer herein, 3% increase in each of the two years. The professional social work unit provides for a general 3% increase in each year, but provides a .5% additional increase at step V of

the social worker schedule. The evidence offered by the Employer demonstrates that Fond du Lac County social workers are paid substantially less than average among social workers in the counties which the parties herein agree are comparable. The additional wage essentially preserves the disparity at the same number of cents per hour. The available internal comparisons support the Employer's position as to general increase. Further, the social worker settlement does tend to recognize the concept that an additional catch-up increase might be appropriate, but the total size of the increase afforded the affected social workers is far closer to the Employer's position than the Union's. This is true because the catch-up proposal of the Union herein is substantially larger than .5%.

The parties disagree as to whether a "catch-up" increase is appropriate at all in this unit and, if so, whether the Union's proposal is closer to appropriate than the Employer's. The Union bases its claim that its "catch-up" increase is appropriate on the fact that unit wages of Correctional Officer II and III are below average among similar positions among the agreed-upon comparable counties, particularly when taking into account longevity pay. The parties have long used the following counties as external comparison counties in this and other units: Dodge, Manitowoc, Outagamie, Sheboygan, Washington, and Winnebago. These counties are appropriate comparable counties; however, to some extent Winnebago's Correctional Officer position is not comparable to that here. I will discuss that further below. The 1998 and 1999 wage rate comparisons for maximum pay with and without maximum longevity pay are as follows:

1998 Wage Rate Comparison

1999 Wage Rate Comparison

	maximum	longevity (max.)	max.	long(max.)
Dodge	16.49	16.74	17.07	17.32
Manitowoc	15.60	15.79	16.07	16.26
Outagamie	16.08	17.07	16.56	17.58
Sheboygan	15.49	15.66	15.95	16.12
Washington	17.47	17.64	17.99	18.16
Winnebago	18.39	18.51	18.94	19.06
Average	16.59	16.90	17.10	17.42
Fond du Lac	16.12	16.12		
disparity	.47	.88		

[Chart assumes 3% increase for Outagamie County in 1999.]

While this does indicate a disparity, the disparity is not of such a nature that it is necessarily appropriate to grant a catch-up increase. The following are the settlements thus far for 1999, Dodge 3.5%, Winnebago 3.25%, Washington 3.0%. Thus, the disparity above will increase by about \$.03 per hour in 1999. The settlement trend for 2000 clearly supports the offer of the Employer for that year, although the application of percentages to differing wage rates would increase the disparity above a few cents per hour. On the basis of maintaining the same cents per hour difference between this disparity, the Employer's offer is closer.

The Union objected to the use of past bargaining history as evidence in support of/against granting a catch-up increase. However, the use of past history, especially a pattern of settlements is an "other" factor which is commonly taken into account in interest arbitration. The Employer's brief at page 4 suggests that there may be a history of efforts to improve the relative status of Correction Officers in these comparisons. The November, 1986, arbitration award involving the then combined sheriff's department unit (sworn and non-sworn) indicates that Correctional Officers ranked lower than sworn officers in comparison to other counties. That award lent some credence to some form of catch-up pay, but concluded that it was inappropriate at that time to grant the catch-up pay. Accordingly, it is possible that there may be a history supporting at least maintaining some unspecified wage level in comparison to similar employees in comparable counties.

However, even if an additional adjustment or "catch-up" increase of some sort were appropriate, the Union's position in this case is excessive. The Union heavily relied upon the average of the above rates for its position. The Employer argues against that by using other measures of comparability. The difficulty with this set of comparisons is that Winnebago County is by far the wage leader in this group. It pays over \$2 per hour more than the average of the rest. The reason Winnebago County is the wage leader is that it uses sworn patrol officers as correctional officers in the jails. A sworn officer has the power of arrest and carries the full range of law enforcement responsibilities. That is a fundamental difference in the responsibility level between the jobs in this unit and Winnebago County's. If Winnebago County's wage rates are not emphasized; for example, if averages are taken without Winnebago County, the 1998 average wage rate for maximum correctional officer is \$16.23 per hour, only \$.11 per hour more than the 1998 wage rate here. Clearly, the Employer's offer would be closer to appropriate.

The Union's argument with respect to longevity is also overstated. Factor 7r h. requires that arbitrators consider the totality of wages and benefits received by employees. Longevity is a factor which should be adequately considered in evaluating wage rates. There is no longevity plan in Fond du Lac County. The Union applies the maximum longevity to the wage rates of other counties and compares. Few employees in this unit are at this level and few would ever spend much time at that level ever. Accordingly, that is not a good bench mark. I have done a comparison of longevity after 10 years of service, as that more nearly comports with the relative seniority of people in this unit. The comparison is as follows:

1998 Wage Rate Comparison

	maximum	longevity (10 years)
Dodge	16.49	16.59
Manitowoc	15.60	15.73
Outagamie	16.08	16.64
Sheboygan	15.49	15.66
Washington	17.47	17.55
Winnebago		
Average w/o Win.	16.23	16.43
Fond du Lac	16.12	16.12
disparity	.11	.31

Again, excluding Winnebago County because its officers are sworn, the average is \$16.43. Looking at a "career earnings" type analysis (adding the total wages paid over a number of years) for the affected period, it is obvious that employees in this unit will fare far better than average. Thus, the proposal of the Union is far more than a mere "catch-up" increase. Taking into account that the Employer's proposed annual increases admittedly are consistent with settlements in comparable jurisdictions, the Employer's position is to be preferred.

AWARD

The parties agreement shall contain the final offer of the Employer.

Dated at Milwaukee, Wisconsin, this 25th day of August, 1999

Stanley H. Michelstetter II